

SENATE BILL 1312
By Tracy

AN ACT to amend Tennessee Code Annotated, Title 50,
relative to enacting the "Tennessee Family
Medical Leave Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Family Medical Leave Act".

SECTION 2. Tennessee Code Annotated, Title 50, is amended by adding the following as a new, appropriately designated section thereto:

(a) Except as provided in subsection (b), it shall be an unlawful employment practice for any employer, as defined in subdivision (c)(2), to refuse to grant a request by any employee with more than twelve (12) months of service with the employer, and who has at least one thousand two hundred fifty (1,250) hours of service with the employer during the previous twelve-month period, to take up to a total of twelve (12) workweeks in any twelve-month period for family care and medical leave. Family care and medical leave requested pursuant to this subsection shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The department of labor and workforce development shall adopt a regulation specifying the elements of a reasonable request.

(b) Notwithstanding subsection (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than fifty (50) employees within seventy-five (75) miles of the worksite where that employee is employed.

(c) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under eighteen (18) years of age; or

(B) An adult dependent child;

(2) "Employer" means:

(A) Any person who directly employs fifty (50) or more persons to perform services for a wage or salary; or

(B) The state, and any political subdivision of the state;

(3) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee;

(B) Leave to care for a parent or a spouse who has a serious health condition; or

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions;

(4) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave;

(5) "FMLA" means the federal Family and Medical Leave Act of 1993;

(6) "Health care provider" means any of the following:

(A) An individual holding either a physician's or surgeon's license issued under title 63, an osteopathic physician's and surgeon's license under title 63, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition; or

(B) Any other person determined by the United States secretary of labor to be capable of providing health care services under the FMLA;

(7) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child;

(8) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility; or

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subsection (a), except as required by subsection (e).

(e) An employee taking a leave permitted by subsection (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subsection (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee

takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f)

(1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group health plan," as defined in section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed twelve (12) workweeks in a twelve-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond twelve (12) workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired; and

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health

condition that entitles the employee to leave under subsection (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subsection (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under subdivision (1), employee benefit plans, including life, short-term, or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subsection (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life, short-term, or long-term disability or accident insurance, or other similar plans, the employer may, at the employer's discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue

to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(j)

(1) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced;

(B) The probable duration of the condition;

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care; and

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subdivision (1)(C), the employer may require the employee to obtain recertification, in accordance with the procedure provided in subdivision (1), if additional leave is required.

(k)

(1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by such employee's health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced;

(B) The probable duration of the condition; and

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of such employee's position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in subdivision (1), if additional leave is required.

(3)

(A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under subdivision (1).

(B) The health care provider designated or approved under subdivision (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subdivision (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under subdivision (1).

(D) The opinion of the third health care provider concerning the information certified under subdivision (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from his or her health care provider that the employee is able to resume work. Nothing in this subdivision shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(I) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subsection (a).

(2) An individual's giving information or testimony as to such individual's own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract.

(n) The provisions of this section shall be construed as separate and distinct from those in Section 3 of this act.

(o) Leave provided for pursuant to this section may be taken in one (1) or more periods. The twelve-month period during which twelve (12) workweeks of leave may be taken under this section shall run concurrently with the twelve-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(p) In any case in which both parents entitled to leave under subsection (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subsection (a).

(q)

(1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(A) The employee is a salaried employee who is among the highest paid ten percent (10%) of the employer's employees who are

employed within seventy-five (75) miles of the worksite at which that employee is employed;

(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer; and

(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subdivision (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subdivision (C).

(r) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed twelve (12) workweeks in a twelve-month period.

SECTION 3. Tennessee Code Annotated, Title 50, is amended by adding the following as a new, appropriately designated section thereto:

(a) It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(1) For an employer to refuse to allow a female employee disabled by pregnancy, childbirth, or related medical conditions to take a leave for a reasonable period of time not to exceed four (4) months and thereafter return to work. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the

female employee is disabled on account of pregnancy, childbirth, or related medical conditions. An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave;

(2)

(A) For an employer to refuse to provide reasonable accommodation for an employee for conditions related to pregnancy, childbirth, or related medical conditions, if she so requests, with the advice of her health care provider;

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy,

childbirth, or medical conditions related to pregnancy or childbirth under any other provisions of this act.

SECTION 4. This act shall take effect July 1, 2005, the public welfare requiring it.